

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

BRENDON KEITH RETZ,

Debtor.

Case No. **04-60302-7**

MEMORANDUM OF DECISION

At Butte in said District this 20th day of June, 2005.

After expedited notice, hearing was held at Missoula on June 8, 2005, on the Trustee's Motion to Approve Proposed Settlement (Docket # 136) between Timberland Construction, Inc. ("TCI"), Timberland Construction, LLC ("TCLLC"), Leesa Valentino ("Valentino"), and Lawrence Kirkemo and Kirkemo & Company (together "Kirkemo"). The Debtor filed an objection on May 16, 2005, (Docket # 150) on the grounds that the settlement results in no payment to the estate, that the settlement was negotiated by counsel for creditor Donald G. Abbey ("Abbey") who has a documented vendetta against the Debtor, and the proposed settlement is tainted by a significant and undisclosed conflict of interest. The Trustee Richard J. Samson ("Samson"), of Missoula, Montana, appeared and testified in support of the proposed settlement. The Debtor Brendon Keith Retz ("Retz") appeared and testified in opposition, and was represented by attorney Harold V. Dye ("Dye"), of Missoula, Montana. Abbey was represented by attorney Edward A. Murphy ("Murphy"), of Missoula, Montana. Exhibits ("Ex.") 4, 5 and 6 were admitted into evidence. Also testifying were Abbey's and TCLLC's attorney

Michael G. Black (“Black”), of Missoula, Montana, certified public accountant (“CPA”) William Matteson (“Matteson”) who is employed as a consultant for Abbey, and Retz’s attorney Thomas T. Tornow (“Tornow”), of Whitefish, Montana, who represented Retz and TCI in their claim against Valentino in state court. At counsel’s request the Court took judicial notice of the final report filed in Adv. No. 04/49 by former Custodian/Receiver James H. Cossitt (“Cossitt”) on October 1, 2004¹. At the conclusion of the parties’ cases-in-chief the Court closed the record and Court took the Trustee’s Motion under advisement. After review of the record and applicable law, this matter is ready for decision. For the reasons set forth below, Retz’s objection will be overruled and the Trustee’s Motion to Approve Proposed Settlement will be granted and the Trustee will be authorized by separate Order to enter into the “Comprehensive, Final, Irrevocable and Mutual Release of All Claims and Rights” (hereinafter the “Settlement Agreement”) which is attached to the Trustee’s Motion (Docket # 136) with TCI, TCLLC, Valentino and Kirkemo.

This Court has jurisdiction of this Chapter 7 bankruptcy under 28 U.S.C. § 1334(a). The Trustee’s Motion to Approve Proposed Settlement is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum includes the Court’s findings of fact and conclusions of law.

FACTS

Brendon Keith Retz formed TCI in 1994 and owns 100% of the shares of stock in TCI, which was engaged in home and road construction. Abbey is a businessman who owns or controls several entities involved in business dealings with the estate. Retz and Abbey met and

¹The First Amended & Substituted Final Report was filed with a motion for approval and discharge of Cossitt as receiver, Docket #84, with supporting exhibits, Docket #85, filed on October 8, 2004. The final report and discharge have not yet been finally decided and are the subject of a pending confidential settlement between the parties.

decided to enter into a business relationship. Retz hoped and believed that Abbey would, in essence, take Retz under his wing and teach him how to become a successful businessman.

Abbey offered to hire TCI to construct a residence on his property on Shelter Island in Northwest Montana. Retz testified that TCI charged a customary rate for labor and equipment, and billed its subcontractor work at cost plus a 10% profit. He testified he and Retz reached a verbal contract for TCI to construct Abbey's residence on Shelter Island. Retz testified that he always believed that TCI's verbal contract was with Abbey personally, not Abbey's other entities. Originally Abbey and Retz agreed that TCI would supply the labor and equipment, which would be billed at their normal rates, and would bill subcontractor work at cost plus 10%. As it happened, Abbey sent checks for payment to TCI drawn on accounts in the name of his business entity.

While the original agreement was between TCI and Abbey, Retz testified that Abbey offered Retz a parcel of land on Shelter Island in lieu of his normal 10% profit. While they never defined the amount of land involved except that it would be equivalent to the value of the 10% profit TCI was foregoing, Retz accepted Abbey's offer personally, on his own behalf notwithstanding TCI's involvement, and would bill Abbey directly. Retz testified that he liked Abbey's offer, but did not know if he could afford it because of TCI's debt load, whereupon Abbey gave him the option of trying out the land option, and if it did not work out they could go back to the original arrangement of cost plus 10% profit. Retz admitted that this verbal agreement was never reduced to a written contract. He testified that he was reluctant to discuss his verbal arrangement because Abbey did not want the public to know of his plans for a subdivision on Shelter Island that he planned to build along with his residence, but Retz

disclosed it after hearing Abbey talk publicly about it.

Retz testified that when the Shelter Island project grew in scope he told Abbey that TCI was experiencing difficulty servicing its equipment debt without the usual 10% profit from the project. At that point, Retz testified, Abbey suggested they become partners so Abbey could supply capital, and they formed TCLLC to cover Retz's concern, with TCLLC taking over all of the assets and liabilities of TCI, including the verbal agreement between Retz personally and Abbey to construct Abbey's Shelter Island residence for land or for a 10% profit.

Retz testified he set up TCLLC originally in July 2001 as a single member LLC, with Retz contributing all assets, and that it took 8 or 9 months for them to negotiate and finalize an operating agreement which became effective in March of 2002, with TCI owning a 50% interest and Abbey owning or controlling the other 50%. Retz testified that he was represented by counsel, Tornow, during the negotiations with whom he consulted about the TCLLC operating agreement, and that he read it.

Retz testified that after the operating agreement took effect, they continued to operate the Shelter Island project under the verbal agreement that Retz would get a piece of land. Samson testified that TCLLC's operating agreement required capital contributions from the members, and that Retz failed to make the required contribution² and so TCI was left with only an economic interest in TCLLC, not a voting interest³.

²Samson testified that Retz contributed equipment and a construction lien claim against Leesa Valentino with an estimated value of \$200,000, while Abbey contributed \$300,000 cash to TCLLC.

³By Memorandum of Decision and Order entered on June 14, 2005, this Court authorized Samson to sell to Abbey's entity LDP Holdings, LLC, 24,000 shares of TCI stock.

Prior to forming TCLLC, Retz, through TCI, had contracted with Leesa Valentino to construct her home, on the same cost plus 10% arrangement described above. TCI billed Valentino each month for its costs. Retz testified that, late in the project, structural deficiencies emerged in Valentino's home. He testified that the deficiencies arose from the design of the home which was engineered by a different company, and not from TCI's construction. Valentino withheld payments and continued to refuse to pay TCI after it made fixes, and refused her bank's request to release the proceeds of her construction loan. Retz testified that the unpaid costs eventually exceeded \$200,000.

TCI through its attorney Tornow sued Valentino in state court for breach of contract and foreclosure of a construction lien on her residence which it had filed. Retz testified that, by this time, TCLLC had been formed and that Abbey told Retz to sue Valentino and Abbey still wanted to go forward with TCLLC. Valentino filed counterclaims against TCI based on structural deficiencies in construction, and Samson testified that Valentino's counterclaims may exceed the amount of TCI's claim for payment from Valentino. Retz testified that the lawsuit against Valentino was the first time TCI had sued a client, and that when it reviewed its records it found a \$100 error in Valentino's favor on this \$1,200,000 project. He testified that Valentino's counterclaims have no merit, and that he would cooperate with the Trustee in prosecuting the action against Valentino.

Tornow represented TCI in the Valentino suit for a year and a half, although he testified that he has not reviewed the case file in 2 years. Tornow testified that the amount of the construction lien is \$209,000 plus interest and attorney fees. Tornow stated that he filed the construction lien, pleadings and exchanged discovery with Valentino, and attempted mediation.

After Cossitt was appointed Receiver he hired Tornow to preserve the status quo, but Tornow withdrew when Abbey made allegations against him. Tornow testified that TCI's claim against Valentino has a value of \$209,000 less the \$100 error they found, which he believes is supported by evidence and that Valentino's counterclaims arose from a design deficiency, not TCI's construction. Tornow testified that he had not been contacted by Samson about the Valentino claims.

On cross examination Tornow identified TCI's expert witnesses, who had been disclosed in the Valentino case, on Ex. 4, which names Stephen Sullivan ("Sullivan") as expert on the subject matter of contract provisions, construction practices and standard of care; and Robert J. Guditis ("Guditis") on the subject of structural engineering and that the project complies with applicable codes and the UBC. Ex. 5 is a series of 3 email communications between Sullivan and Retz dated August 20 and 21, 2003, in which Sullivan terminated his "agreement and working relationship with Timberland" stating he did "not intend to expose myself to any claims from you or anyone else." Tornow testified that he did not know that Sullivan terminated his relationship as an expert witness⁴, but perhaps only as a consultant, and that TCI still has Guditis as an expert witness and possibly unnamed others. Ex. 6 is Valentino's expert witness list dated July 16, 2003, and it names Kirkemo, Guditis and 7 other potential expert witnesses, as well as Retz's opinion testimony from his deposition. Notwithstanding, Tornow testified that he would take the case on a contingency fee and that his opinion on the merits of TCI's claim against

⁴Sullivan states that he will gather up all the Timberland documentation that he has and drop it off in Tornow's office. Even ignoring Sullivan's unequivocal termination, without such documentation it is extremely unlikely that Sullivan intended to continue his relationship with Retz, TCI and TCLLC as an expert witness.

Valentino and her counterclaim did not change.

The construction of Abbey's Shelter Island project begun under TCI proceeded under TCLLC after it was formed and later under the operating agreement, with TCLLC billing Abbey a total of just under \$10 million. Eventually Retz's relationship with Abbey deteriorated. Retz and TCI filed a complaint against Abbey dated August 19, 2003, in Cause No. DV-03-440(B), Montana Eleventh Judicial District Court, averring various claims for relief including seeking a temporary restraining order to enjoin Abbey from interfering with Retz's financing obligations with Whitefish Credit Union and Glacier Bank of Whitefish or from destroying TCLLC, and in addition claims for breach of contract based on the Timberland Properties operating agreement (Count Two), breach of fiduciary duty, and tortious interference with Retz's business relations. Cossitt was appointed Custodian/Receiver of TCLLC and other LLC entities in the state court action.

Retz filed his Chapter 7 petition on February 12, 2004, and filed his Schedules and Statements on March 1, 2004. Schedule B lists Retz's 100% interest in the stock of TCI, at an unknown⁵ current market value, a 50% interest in Timberland Properties, LLC, at an unknown value, and 50% interest in the stock of TCLLC with an unknown value. Schedule B also lists at paragraph 17 a \$1,000,000 claim described as "Retz v. Abbey", but lists "None" at paragraph 15: "Accounts receivable". Schedule F lists a \$3,500,000 contingent, unliquidated and disputed claim held by Donald G. Abbey. Valentino is not listed as a debtor or a creditor.

Samson filed an asset notice and request for claims bar date on March 24, 2004.

⁵Dye explained in response to the Court's question that the value of Retz's TCI stock is unknown because of the outstanding litigation with Valentino.

However, at the hearing Samson testified that, after many hours of extensive investigation of the Debtor's records, and speaking with Abbey's representatives, Samson has determined that this estate is administratively insolvent, and that TCI is not operating, is saddled with debt and has no assets other than an interest in TCLLC because of TCI's default under the operating agreement, and that he seeks sale of the TCI stock and settlement of the Valentino litigation to escape the "quagmire" of litigation which is working a financial and personal hardship on the Trustee.

Samson admitted that his investigation included little discussion with Retz about TCLLC, but he had many discussions with Cossitt and Abbey's representatives in addition to his own examination of Retz's records. Samson testified that Retz was not forthcoming, and it took a long time for Retz to provide documents in response to Samson's requests⁶. Samson testified that he conducted negotiations with Abbey over a period of many months after Retz's Chapter 7 petition was filed, with the aim to extricate the estate from the TCLLC "quagmire", and the pending Motion to Approve Proposed Settlement of the Valentino litigation is part of his effort to achieve that result.

Samson removed the state court lawsuit brought by Retz and TCI against Abbey to this Court by Notice of Removal filed with this Court on April 22, 2004, Adversary No. 04/49. Matteson is a CPA licensed in California and Hawaii. Abbey hired him to assess the status of TCLLC's financial controls and verify TCI's compliance with TCLLC's operating agreement. Matteson testified that he was involved in Adv. No. 04/49, and that he worked with Cossitt for a period of time that he described as contentious. Matteson testified that TCLLC had very little

⁶Samson explained that he is involved with litigation with Retz, and therefore he would not listen to Retz if he offered information, but Samson would listen to Retz's attorney Dye.

financial controls, that deeds and transfers had not been completed and TCLLC was borrowing funds without Abbey's authorization as required under the operating agreement.

Cossitt filed his motion for approval of the first amended final report and discharge of receiver on October 1, 2004 (Docket #84) in Adv. No. 04/49, and filed the exhibits to the final report on October 8, 2004 (Docket #85)⁷. In his final report and exhibits thereto, Cossitt listed TCLLC's accounts receivable in the amount of \$1,106,741.00, but doubted they have that much value. Specifically, in Ex. 23 to the final report⁸ dated February 13, 2004, Cossitt states that the Valentino receivable "has been in litigation for years, is fraught with collection problems and will be difficult to collect." Part of the problem in collection, according to Cossitt in Ex. 23, is the lack of a basic level of trust in Retz's, TCI's, and TCLLC's records and the authenticity and veracity of their numbers, a problem compounded by the administrative insolvency Cossitt encountered, just like Samson has, whereby Cossitt's professionals were unwilling to expend further credit to the receivership by working to straighten out the books without payment.

Black testified that he was retained by Abbey in February 2004 to represent Abbey in Adversary No. 04/49. Black is listed on the settlement agreement attached to the Trustee's Motion as attorney for TCLLC, even with the Trustee's sale of TCI stock to LDP Holdings. As Trustee, Samson is listed on the settlement agreement as the party signing for TCI.

Abbey's position with respect to TCI's status was and is that Retz's incapacity for failure

⁷Ex. 1 to Cossitt's final report describes TCLLC's books as a "mess", and that its office was "unorganized chaos".

⁸Samson and Abbey filed objections to approval of Cossitt's final report, and that matter was set for hearing on November 4, 2004, after which the Court entered an Order governing future proceedings involving Cossitt's receivership.

to contribute to TCLLC was imputed to TCI. With the sale of TCI stock, that matter is now moot. Black testified that TCLLC is insolvent because it cannot pay its creditors and its liabilities exceed its assets, and that Abbey's position is that TCLLC will never be able to make a distribution to its members.

Samson gave an opinion based on his investigation of the Debtor's records that TCLLC has no tangible assets remaining, that all its real estate has been sold and secured debt retired, and that TCLLC is a nonoperating LLC with no value left for the estate and no assets to retire TCLLC's unsecured debt and distribute anything to its members. He further testified that because TCI failed to make its required capital contribution under the TCLLC operating agreement, he agrees that TCI is disassociated and has no voting rights in TCLLC.

Matteson examined TCLLC's records. He testified that TCLLC's assets were less than \$2.6 million, not including accounts receivable he deemed uncollectible, while its liabilities exceeded \$2.7 million. Matteson testified that Cossitt concentrated on trying to unwind TCLLC and other entities for which he was Custodian/Receiver, and did not expend effort to collect accounts receivables of dubious collectibility. Matteson testified that Cossitt requested the state court allow TCLLC to go into Chapter 7 liquidation, but Abbey would not agree because of the state of the records and unwillingness to give Cossitt a blank check.

The proposed Settlement Agreement basically is a mutual release of all claims, including future and unanticipated damages, and dismissal of the Valentino litigation with prejudice. In the sale of TCI stock to LDP Holdings previously approved, Samson and the estate obtained a release from liability for TCI's failure to contribute the value of the Valentino litigation and brokerage stock account.

Samson asserted that it is in the estate's best interest to extricate it from the Valentino counterclaims based on his discussion with various attorneys and his investigation, and the hardship on the Trustee of continued involvement in this "quagmire".

With the approved sale of TCI stock to LDP Holdings, Abbey is in control of TCI and effective control of TCLLC. However, Samson and Black both testified that Abbey already is in effective control of TCLLC through entities Abbey controls because Retz/TCI was disassociated as a member of TCLLC based on TCI's failure to make the required capital contributions of the value of the Valentino claim and the brokerage stock account. If the settlement is approved the Trustee and estate will be extricated from TCLLC and the Valentino lawsuit, and Abbey through his entities will be free to pursue TCLLC and TCI affairs.

Retz objects to the proposed settlement on the grounds that the settlement results in no payment to the estate, that the settlement was negotiated by Abbey's counsel Black, that Abbey has a documented vendetta against the Debtor, and the proposed settlement is tainted by a significant and undisclosed conflict of interest. Samson repeated that this case is taking a heavy toll on the Trustee personally and financially, and that TCI is an insolvent Subchapter S corporation which is not operating, is saddled with debt and has no assets to finance the Valentino litigation.

DISCUSSION

I. Approval of Settlement – F.R.B.P. 9019(a).

Samson moves for approval of the settlement of the Valentino litigation, with no payment to the estate but a mutual release of all claims and dismissal of the suit with prejudice, in order to extricate the estate from the TCI/TCLLC/Valentino "quagmire", a term Samson repeated based

on the volume of litigation this case presently entails at a time when it is administratively insolvent and a financial and personal hardship on the Trustee.

This Court addressed the tests for compromise and settlement under F.R.B.P. Rule 9019(a) in *In re Schrock*, 9 Mont. B.R. 414, 416-417 (Bankr. D. Mont. 1991) as follows:

In *In re Pierce Packing Company*, 6 Mont. B.R. 179, 179-80 (1988) and *In re Haddock*, 6 Mont. B.R. 263, 264-65 (1988), this Court adopted the test set forth in *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986), for approval of a compromise settlement.

"Although the bankruptcy court has great latitude in authorizing a compromise, it may only approve a proposal that is 'fair and equitable.'" *Woodson v. Fireman's Fund Ins. Co.*, 839 F.2d 610, 620 (9th Cir. 1988)(Citing *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.) cert. denied sub nom. *Martin v. Robinson*, 479 U.S. 854, 107 S.Ct. 189, 93 L.Ed. 2d 122 (1986)). In evaluating a settlement, the Court must consider:

'(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views of the premises.' *A & C Properties*, 784 F.2d at 1381.

Woodson, 839 F.2d at 620 (additional citation omitted).

See also, *In re MGS Marketing*, 111 B.R. 264 (9th Cir. BAP 1990). In addition to the four prong test set forth in *A & C Properties*, it is also well established that the law favors compromise. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). In accordance with that principle, Bankruptcy Rule 9019(a) gives this Court broad authority to approve a compromise or settlement. *In re General Store of Beverly Hills*, 11 B.R. 539, 542 (9th Cir. BAP 1981). The determination of whether to approve a compromise or settlement is a matter within the sound discretion of this Court. *Providers Benefit Life Insurance Co. v. Tidewater Group, Inc.*, 13 B.R. 764, 765 (Bankr. N.D. Ga. 1981). See also, *In re Lions Capital Group*, 49 B.R. 163, 175-76 (Bankr. S.D. N.Y. 1985).

Taking the *A & C Properties* factors in order, first, the Court finds that there is not a high probability of success in the Valentino litigation. The evidence shows that the Valentino

litigation has been languishing for years, and notwithstanding Tornow's optimism, TCI's expert Sullivan terminated his relationship with TCI, leaving only 1 expert witness on TCI's expert witness list, Guditis, who happens to be listed as one of Valentino's several expert witnesses. Retz admitted there were defects in the construction of the home, albeit he attributed the defects to design, not TCI's construction. Samson testified that Valentino's counterclaims may exceed the amount of TCI's claim against Valentino. Debtor argues that Valentino has not filed a claim against the estate, but TCI is a separate entity from the Debtor, as shown by Debtor's failure to list TCI's claim against Valentino on his Schedule B. Retz offered to assist Samson in the Valentino litigation, but Samson stated that Retz was not forthcoming in response to the Trustee's request for information, and the Court agrees. The Court had the opportunity to observe the demeanor of the witnesses during trial and under cross examination, and based upon the Court's observations the Court finds that Samson is a credible witness. *In re Taylor*, 514 F.2d 1370, 1373-74 (9th Cir. 1975); *See also Casey v. Kasal*, 223 B.R. 879, 886 (E.D. Pa. 1998). Based upon Samson's testimony at hearing and Cossitt's report, and Retz's admission there were defects, the Court finds that the first *A & C Properties* factor, probability of success on the merits, warrants approval of the proposed Settlement Agreement because the probability of success is not high.

The second *A & C Properties* factor, the difficulties, if any, to be encountered in the matter of collection, does not weigh strongly either in favor or against approval of the settlement. Ex. 23 to Cossitt's final report characterized the Valentino litigation as fraught with collection problems and that it will be difficult to collect. On the other side is Tornow's and Retz's testimony that they filed a construction lien properly which they sued to foreclose. Assuming the

plaintiff prevailed, which the Court noted above is not a high probability, collection of a judgment by foreclosure of a construction lien conceivably could succeed.

The third *A & C Properties* factor is the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it. This factor weighs strongly in favor of approval of the proposed Settlement Agreement. Samson moves for approval in order to extricate the estate from a “quagmire” of litigation, a term Samson repeated based on the volume of litigation this case presently entails at a time when it is administratively insolvent and a financial and personal hardship on the Trustee. The Valentino litigation is complex and may involve the conflicting testimony of experts and the applicable standards of care for home design and construction. Cossitt noted the Valentino litigation has lasted for years. Valentino has several experts lined up, including the only remaining expert disclosed by TCI, Guditis. The Trustee presently has no attorney employed to litigate the Valentino litigation, and other than Tornow, who withdrew, no testimony exists on the record of an attorney willing to take on the case on a contingency basis. Retz offered no credible evidence to show that the Valentino litigation would not suffer from continued delay, or that it would not be expensive or complex.

The fourth *A & C Properties* factor is the paramount interest of the creditors and a proper deference to their reasonable views of the premises. Abbey is the largest scheduled creditor of the estate, and the entity he now controls, TCLLC, is a party to the proposed Settlement Agreement. The Trustee is fiduciary for the unsecured creditors, and he moves for approval of the settlement. The only objection to approval of the settlement was filed by the Debtor, who argues that Abbey has a documented vendetta against the Debtor and the Trustee’s investigation

of the settlement is tainted by a significant and undisclosed⁹ conflict of interest. Black testified that he obtained all necessary waivers of conflicts of interest. Debtor offered no evidence in support of his contention of an undisclosed conflict of interest, and argument by Debtor's counsel is not evidence. *Hurley v. Student Loan Acquisition Auth. of Ariz., et al., (In re Hurley)*, 258 B.R. 15, 23 (Bankr. D. Mont. 2001); *United States v. Velarde-Gomez*, 224 F.3d 1062, 1073 (9th Cir. 2000).

The Court finds that the fourth factor weighs in favor of the Settlement Agreement, under the terms of which Valentino, TCLLC and other parties release the estate from present and future damages, which relieves the Trustee and the estate from ongoing expense and future liability and may make it possible for some distribution to unsecured creditors, without the delay, risk and expense involved if the Valentino litigation is undertaken with no guarantee of success.

Applying the above factors the Court finds that three of the four *A & C Properties* factors weigh in favor of approval of the proposed Settlement Agreement. Therefore, the Court finds and concludes that the terms of the proposed Settlement Agreement are fair and equitable and satisfy the requirements of F.R.B.P. 9019(a).

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this Chapter 7 bankruptcy under 28 U.S.C. § 1334(a).
2. The Trustee's proposed settlement between Timberland Construction, Inc. ("TCI"), Timberland Construction, LLC ("TCLLC"), Leesa Valentino ("Valentino"), and Lawrence Kirkemo and Kirkemo & Company is a core proceeding under 28 U.S.C. § 157(b)(2).
3. The Trustee satisfied his burden of proof under F.R.B.P. 9019(a), by a preponderance

⁹Notwithstanding the "documented vendetta".

of the evidence after notice and a hearing, to show that the proposed Settlement Agreement between the Trustee, TCI, TCLLC, Valentino, and Lawrence Kirkemo and Kirkemo & Company is fair and equitable and in the best interests of the parties and the estate.

IT IS ORDERED a separate Order shall be entered in conformity with the above, overruling the Debtor's objection (Docket # 150), granting the Trustee's Motion to Approve Proposed Settlement (Docket # 136) and authorizing the Trustee to enter into the "Comprehensive, Final, Irrevocable and Mutual Release of All Claims and Rights" which is attached to Docket # 136, with TCI, TCLLC, Valentino and Kirkemo, and thereafter the parties thereto shall be bound by and shall perform in accordance with the terms of the "Comprehensive, Final, Irrevocable and Mutual Release of All Claims and Rights".

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana